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Attorneys for Defendant  
LOCKHEED MARTIN CORPORATION

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

EMILIO COLLADO,

Plaintiff,

v.

LOCKHEED MARTIN, and DOES 1  
THROUGH 20, inclusive,

Defendants.

Case No. C07 05190 JF

**DEFENDANT'S REPLY BRIEF AND  
NOTICE OF PLAINTIFF'S NON-  
OPPOSITION TO DEFENDANT'S  
MOTION TO DISMISS AND TO STRIKE  
PURSUANT TO FED. R. CIV. P. 12(b)6;  
12(f)**

Date: November 30, 2007  
Time: 9:00 a.m.  
Judge: Hon. Jeremy Fogel  
Courtroom: 3, 5<sup>th</sup> Floor

On October 15, 2007, Defendant Lockheed Martin Corporation (erroneously sued as "Lockheed Martin") filed its Motion to Dismiss and Strike Portions of Plaintiff Emilio Collado's ("Plaintiff") Complaint, and set the hearing related to its Motion for November 30, 2007. Pursuant to Northern District Local Rule 7-3(a), Plaintiff's opposition papers were due to be filed and served "not less than 21 days before the hearing date." Given the November 30 date set for hearing, Plaintiff's opposition papers were due by Friday, November 9, 2007.

As of the date of this Reply, Lockheed Martin has not received any opposition papers or a statement of non-opposition from Plaintiff, nor does the Court's docket reveal that any

1 opposition has been filed. Consequently, Lockheed Martin respectfully requests that this Court  
2 deem Plaintiff's failure to file an opposition to Defendant's motion as consent to the granting of the  
3 instant Motion.

4 Additionally, for the reasons set forth in its moving papers, Lockheed Martin  
5 respectfully requests that this Court grant its Motion to strike portions of Plaintiff Emilio Collado's  
6 Complaint alleging race and national origin discrimination and to strike all allegations of emotional  
7 distress from Plaintiff's third and fifth causes of action, for breach of contract and breach of an  
8 implied covenant, respectively. Defendant further requests the Court grant its motion to dismiss  
9 Plaintiff's fifth cause of action for breach of the covenant of good faith and fair dealing.

10 Dated: November 16, 2007  
11

12 /s/ Todd K. Boyer

13 MICHELLE B. HEVERLY  
14 TODD K. BOYER  
15 LITTLER MENDELSON  
16 A Professional Corporation  
17 Attorneys for Defendant  
18 LOCKHEED MARTIN CORPORATION  
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